

ORDINANCE NUMBER O- 20439 (NEW SERIES)

DATE OF FINAL PASSAGE NOV 25 2014

AN ORDINANCE AMENDING CHAPTER 2, ARTICLE 7, DIVISION 29 OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING SECTION 27.2916; ADDING SECTIONS 27.2947 AND 27.2959; AND AMENDING SECTIONS 27.2966, 27.2971, AND 27.2980 ALL RELATING TO THE CITY OF SAN DIEGO ELECTION CAMPAIGN CONTROL ORDINANCE.

WHEREAS, pursuant to San Diego Municipal Code section 26.0414, the City of San Diego Ethics Commission has the responsibility of regularly reviewing the City's Election Campaign Control Ordinance, and proposing updates to these laws to the City Council for its approval; and

WHEREAS, during the 2012 election cycle, as well as the recent Council District 4 and Mayoral special elections, the Ethics Commission identified various issues relating to current campaign laws that need amendments in order to preserve their original purpose and intent; and

WHEREAS, these issues include: (1) the undermining of campaign contribution limits by the duplication or re-publication of candidate materials by committees making independent expenditures; and (2) the avoidance of disclosure of sponsors and major donors by committees disseminating campaign advertisements on credit; and

WHEREAS, the Ethics Commission recommends amendments to the City's campaign laws relating to duplication of candidate materials and vendor credit related to campaign advertisements, together with other housekeeping amendments; NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That Chapter 2, Article 7, Division 29 of the San Diego Municipal Code is amended by amending section 27.2916 to read as follows:

**§27.2916 Campaign Contribution Checking Account**

- (a) Every *controlled committee* that accepts *contributions* and every *primarily formed recipient committee* shall establish one campaign checking account at a bank or other financial institution with an office or branch in the state of California.
- (b) through (c) [No change in text.]

Section 2. That Chapter 2, Article 7, Division 29 of the San Diego Municipal Code is amended by adding sections 27.2947 and 27.2959 to read as follows:

**§27.2947 Duplication of a Candidate's Campaign Materials**

- (a) Any *committee* that makes a *payment* for distributing or disseminating an advertisement that duplicates, reproduces, or republishes a *candidate's* campaign materials, in whole or in part, has made a *contribution* to the *candidate* for purposes of the *contribution* limits and source prohibitions set forth in sections 27.2934, 27.2935, 27.2950, and 27.2951.
- (b) The "making" of a *contribution* to a *candidate* under subsection (a) does not mean that the *candidate* has "accepted" or "received" a *contribution* for purposes of *contribution* limits or source prohibitions. Accordingly, nothing in this section imposes any liability on a *candidate* whose campaign materials were duplicated, reproduced, or republished.
- (c) This section applies to a *committee's* advertisement that uses materials created, prepared, or obtained by the *candidate* or the *candidate's controlled committee* for campaign purposes, including, but not limited to, mailers; flyers; pamphlets; door hangers; walking cards; posters; yard signs; billboards; banners and large signs; business cards; campaign buttons; bumper stickers; newspaper, magazine, television, radio, and Internet advertisements; photographs; audio recordings;

and videos, regardless of whether such materials were accessible to members of the public on the Internet or through other means not requiring coordination with the *candidate* or the *candidate's controlled committee*.

- (d) This section does not apply to:
- (1) any written words, phrases, or sentences contained in a *candidate's* campaign materials;
  - (2) any statements made by a *candidate* while delivering a speech or speaking at a debate, forum, or similar public event and contained in an advertisement that does not use an audio or video recording made by the *candidate* or the *candidate's controlled committee*;
  - (3) the duplication of three or fewer photographs of the *candidate*;
  - (4) an advertisement that clearly advocates the defeat of the *candidate*;
  - (5) *member communications*; or,
  - (6) instances in which a *payment* was “made at the behest” of a *candidate*, as that term is defined in title 2, section 18225.7 of the California Code of Regulations. Such a *payment* is a *contribution* regardless of whether any campaign materials were duplicated, reproduced, or republished.
- (e) Nothing in this section imposes on any *candidate* or *committee* any filing obligations in addition to those set forth in California Government Code sections 81000 *et seq.* and title 2 of the California Code of Regulations.

**§27.2959 Extensions of Vendor Credit – Primarily Formed Recipient Committees**

- (a) *Vendors* may extend credit to *primarily formed recipient committees* in the ordinary course of business in the same manner they extend it to *persons* for other than *political purposes*, except as set forth in subsection (b).

- (b) A *primarily formed recipient committee* may not accept credit from a *vendor*, but shall instead pay the *vendor* in full from existing funds at the time of placing the order, if all three of the following conditions are met:
- (1) the *vendor* is providing goods or services relating to designing, creating, printing, mailing, posting, broadcasting, or disseminating a campaign advertisement;
  - (2) the balance in the *committee's* bank account, including funds received but not yet available, is insufficient to cover in full the *committee's* advertising debt liability; and,
  - (3) the identity of the *committee's sponsors* or top two donors of \$10,000 or more would change if any *person* made a *contribution* to the *committee* in an amount equal to the *committee's* advertising debt liability.
- (c) For purposes of this section:
- (1) “a campaign advertisement” means any tangible or intangible campaign content that requires a “paid for by” or similar funding disclosure under sections 27.2970, 27.2971, 27.2972, or 27.2974, and any television or radio advertisement that requires a “paid for by” or similar funding disclosure pursuant to state or federal campaign law;
  - (2) “a *contribution to the committee*” refers to a potential *contribution* by any *person* who would be contributing to the *committee* for the first time as well as by any *person* who has already contributed to the *committee*;
  - (3) “advertising debt liability” means the full costs of the campaign advertisement being considered by the *committee* plus the remaining balance owed for all other campaign advertisements purchased by the *committee* on credit; and,

- (4) the costs of a campaign advertisement do not include costs owed solely to a *vendor* who is paid at regular intervals for providing consulting services to the *committee* over and above those associated with campaign advertisements.

Section 3. That Chapter 2, Article 7, Division 29 of the San Diego Municipal Code is amended by amending sections 27.2966, 27.2971, and 27.2980 to read as follows:

**§27.2966 Establishment of a Professional Expense Committee and Checking Account; Recordkeeping**

- (a) A *City Official or candidate* who raises professional expense funds shall deposit the funds in, and expend the funds from, a professional expense checking account that is separate from any other bank account held by the *City Official or candidate*. The checking account shall be established at a bank or other financial institution with an office or branch in the state of California.
- (b) through (d) [No change in text.]

**§27.2971 Telephone Communications**

- (a) through (e) [No change in text.]
- (f) The disclosure requirements set forth in this section shall not apply to a *candidate* personally engaging in a live telephone communication or to a *member communication* by an organization that is not a political party.

**§27.2980 Disclosure of Electioneering Communications**

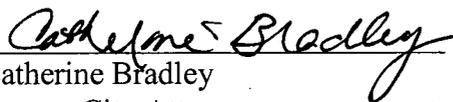
- (a) through (e) [No change in text.]
- (f) The communications subject to this section do not include:
  - (1) news stories and editorials by broadcast outlets or regularly published newspapers, periodicals, or magazines of general circulation;
  - (2) *member communications*, except those made by a political party;
  - (3) communications made in the form of a slate mailer;

- (4) communications paid for by a governmental entity;
  - (5) communications that occur during a *candidate* debate or forum;
  - (6) communications made solely to promote a *candidate* debate or forum made by or on behalf of the *person* sponsoring the debate or forum, provided that such communications do not otherwise discuss the positions or experience of a *candidate*;
  - (7) communications in which a *candidate*'s name is required by law to appear and the *candidate* is not singled out in the manner of display;
  - (8) printed materials in quantities of 200 or less distributed within a single calendar month; or,
  - (9) live or recorded telephone calls made to less than 500 individuals or households.
- (g) [No change in text.]
- (h) The obligation to file an "Electioneering Communication Disclosure Report" under subsection (c) shall not apply to any entity that is a *committee*.

Section 4. That a full reading of this ordinance is dispensed with prior to its passage, a written or printed copy having been available to the City Council and the public prior to the day of its passage.

Section 5. That this ordinance shall take effect and be in force on January 1, 2015, and shall be applicable only to elections occurring after that date.

APPROVED: JAN I. GOLDSMITH, City Attorney

By   
Catherine Bradley  
Deputy City Attorney

CMB:sc:als  
09/29/2014  
Or.Dept:Ethics Commission  
Doc No. 840753

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at its meeting of NOV 18 2014.

ELIZABETH S. MALAND  
City Clerk

By   
Deputy City Clerk

Approved: 11/24/14  
(date)

  
KEVIN L. FAULCONER, Mayor

Vetoed: \_\_\_\_\_  
(date)

\_\_\_\_\_  
KEVIN L. FAULCONER, Mayor

**STRIKEOUT ORDINANCE**

**OLD LANGUAGE: ~~Struck Out~~**

**NEW LANGUAGE: Double Underlined**

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**§27.2916 Campaign Contribution Checking Account**

(a) Every *controlled committee* that accepts *contributions* and every *primarily formed recipient committee* shall establish one campaign checking account at an ~~office of~~ a bank or other financial institution ~~providing checking account services located in the City of San Diego~~ with an office or branch in the state of California.

(b) through (c) [No change in text.]

**§27.2947 Duplication of a Candidate's Campaign Materials**

(a) Any committee that makes a payment for distributing or disseminating an advertisement that duplicates, reproduces, or republishes a candidate's campaign materials, in whole or in part, has made a contribution to the candidate for purposes of the contribution limits and source prohibitions set forth in sections 27.2934, 27.2935, 27.2950, and 27.2951.

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- (b) The “making” of a *contribution* to a *candidate* under subsection (a) does not mean that the *candidate* has “accepted” or “received” a *contribution* for purposes of *contribution* limits or source prohibitions. Accordingly, nothing in this section imposes any liability on a *candidate* whose campaign materials were duplicated, reproduced, or republished.
- (c) This section applies to a *committee’s* advertisement that uses materials created, prepared, or obtained by the *candidate* or the *candidate’s controlled committee* for campaign purposes, including, but not limited to, mailers; flyers; pamphlets; door hangers; walking cards; posters; yard signs; billboards; banners and large signs; business cards; campaign buttons; bumper stickers; newspaper, magazine, television, radio, and Internet advertisements; photographs; audio recordings; and videos, regardless of whether such materials were accessible to members of the public on the Internet or through other means not requiring coordination with the *candidate* or the *candidate’s controlled committee*.
- (d) This section does not apply to:
- (1) any written words, phrases, or sentences contained in a *candidate’s* campaign materials;
  - (2) any statements made by a *candidate* while delivering a speech or speaking at a debate, forum, or similar public event and contained in an advertisement that does not use an audio or video recording made by the *candidate* or the *candidate’s controlled committee*;
  - (3) the duplication of three or fewer photographs of the *candidate*;
  - (4) an advertisement that clearly advocates the defeat of the *candidate*;
  - (5) *member communications*; or,

- (6) instances in which a *payment* was “made at the behest” of a *candidate*, as that term is defined in title 2, section 18225.7 of the California Code of Regulations. Such a *payment* is a *contribution* regardless of whether any campaign materials were duplicated, reproduced, or republished.
- (e) Nothing in this section imposes on any *candidate* or *committee* any filing obligations in addition to those set forth in California Government Code sections 81000 *et seq.* and title 2 of the California Code of Regulations.

**§27.2959**

**Extensions of Vendor Credit – Primarily Formed Recipient Committees**

- (a) *Vendors* may extend credit to *primarily formed recipient committees* in the ordinary course of business in the same manner they extend it to *persons* for other than *political purposes*, except as set forth in subsection (b).
- (b) A *primarily formed recipient committee* may not accept credit from a *vendor*, but shall instead pay the *vendor* in full from existing funds at the time of placing the order, if all three of the following conditions are met:
  - (1) the *vendor* is providing goods or services relating to designing, creating, printing, mailing, posting, broadcasting, or disseminating a campaign advertisement;
  - (2) the balance in the *committee’s* bank account, including funds received but not yet available, is insufficient to cover in full the *committee’s* advertising debt liability; and,
  - (3) the identity of the *committee’s* sponsors or top two donors of \$10,000 or more would change if any *person* made a *contribution* to the *committee* in an amount equal to the *committee’s* advertising debt liability.

(c) For purposes of this section:

- (1) “a campaign advertisement” means any tangible or intangible campaign content that requires a “paid for by” or similar funding disclosure under sections 27.2970, 27.2971, 27.2972, or 27.2974, and any television or radio advertisement that requires a “paid for by” or similar funding disclosure pursuant to state or federal campaign law;
- (2) “a contribution to the committee” refers to a potential contribution by any person who would be contributing to the committee for the first time as well as by any person who has already contributed to the committee;
- (3) “advertising debt liability” means the full costs of the campaign advertisement being considered by the committee plus the remaining balance owed for all other campaign advertisements purchased by the committee on credit; and,
- (4) the costs of a campaign advertisement do not include costs owed solely to a vendor who is paid at regular intervals for providing consulting services to the committee over and above those associated with campaign advertisements.

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- (a) A *City Official or candidate* who raises professional expense funds shall deposit the funds in, and expend the funds from, a professional expense checking account that is separate from any other bank account held by the *City Official or candidate*. The checking account shall be established at ~~an office of~~ a bank or other financial institution ~~providing checking account services located in the City of San Diego~~ with an office or branch in the state of California.

(b) through (d) [No change in text.]

**§27.2971 Telephone Communications**

(a) through (e) [No change in text.]

(f) The disclosure requirements set forth in this section shall not apply to a *candidate* personally engaging in a live telephone communication or to a member communication by an organization that is not a political party.

**§27.2980 Disclosure of Electioneering Communications**

(a) through (e) [No change in text.]

(f) The communications subject to ~~the provisions of~~ this section do not include:

(1) news stories and editorials by broadcast outlets or regularly published newspapers, periodicals, or magazines of general circulation;

~~(2) communications that are considered expenditures or independent expenditures under this Division;~~

~~(3)~~(2) *member communications*, except those made by a political party;

~~(4)~~(3) communications made in the form of a slate mailer;

~~(5)~~(4) communications paid for by a governmental entity;

~~(6)~~(5) communications that occur during a *candidate* debate or forum;

~~(7)~~(6) communications made solely to promote a *candidate* debate or forum made by or on behalf of the *person* sponsoring the debate or forum, provided that such communications do not otherwise discuss the positions or experience of a *candidate*; ~~or~~

~~(8)~~(7) communications in which a *candidate's* name is required by law to appear and the *candidate* is not singled out in the manner of display;

(8) printed materials in quantities of 200 or less distributed within a single calendar month; or,

(9) live or recorded telephone calls made to less than 500 individuals or households.

(g) [No change in text.]

(h) The obligation to file an "Electioneering Communication Disclosure Report" under subsection (c) shall not apply to any entity that is a committee whose ~~primary filing officer is not the City Clerk.~~

CMB:sc:als  
09/29/2014  
Or.Dept:Ethics Commission  
Doc No. 840734

Passed by the Council of The City of San Diego on NOV 18 2014, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Sherr Lightner	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ed Harris	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Todd Gloria	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Myrtle Cole	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mark Kersey	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lorie Zapf	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Scott Sherman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
David Alvarez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Marti Emerald	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage NOV 25 2014

AUTHENTICATED BY:

KEVIN L. FAULCONER  
Mayor of The City of San Diego, California.

(Seal)

ELIZABETH S. MALAND  
City Clerk of The City of San Diego, California.

By Mary Hernandez, Deputy

I HEREBY CERTIFY that the foregoing ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on

OCT 21 2014

, and on NOV 25 2014

I FURTHER CERTIFY that said ordinance was read in full prior to passage or that such reading was dispensed with by a vote of five members of the Council, and that a written copy of the ordinance was made available to each member of the Council and the public prior to the day of its passage.

(Seal)

ELIZABETH S. MALAND  
City Clerk of The City of San Diego, California.

By Mary Hernandez, Deputy

Office of the City Clerk, San Diego, California

Ordinance Number O- 20439